

ENVIRONMENTAL QUALITY COUNCIL

July 6, 1995, Montana State Capitol

Original Minutes with Attachments

COUNCIL MEMBERS PRESENT

Mr. Jerry Noble, Chair
Rep. Vicki Cocchiarella, Vice Chair
Sen. Vivian Brooke
Sen. William Crismore
Sen. Steve Doherty
Sen. Lorents Grosfield
Rep. Dick Knox
Mr. Glenn Marx
Sen. Ken Mesaros
Rep. Scott Orr

Rep. Bill Ryan
Mr. Jerry Sorensen
Ms. Jeanne-Marie Souvigny
Rep. William Tash
Mr. Greg Tollefson
Sen. Jeff Weldon

COUNCIL MEMBERS EXCUSED

Rep. Debbie Shea

STAFF MEMBERS PRESENT

Ms. Deborah Schmidt
Mr. Todd Everts
Mr. Michael Kakuk
Ms. Sallie Melcher

VISITORS' LIST

Attachment #1

COUNCIL ACTION

Accepted changing "Executive Director" to "Legislative Environmental Analyst" in the EQC Rules.

Unanimously passed a motion to recommend MR. EVERTS to the Legislative Council as the new Legislative Environmental Analyst.

Adopted a work plan for the 1995-96 interim.

CALL TO ORDER AND ROLL CALL

The Chair called the meeting to order at 8:40 A.M. He asked the secretary to take note of members in attendance. (Attachment #2)

APPROVAL OF MINUTES

The Council voted to approve the minutes of the November 17-18, 1995 meeting; to approve the minutes of the December 19-20, 1995 meeting; and, with changes and corrections requested by Senator Brooke, to approve the minutes from the June 2, 1995 meeting.

ADMINISTRATIVE MATTERS

Legislative Environmental Analyst (LEA) Hiring Process

MR. NOBLE asked for a report from BOB PERSON, Executive Director of the Legislative Services Division, regarding the hiring process for the LEA. MR. PERSON reviewed what had transpired-- the formation of a hiring subcommittee at the request of MR. NOBLE, the subcommittee's decision to recruit from within the reorganized legislative branch, the preparation of a job description and application. He reported there were four well-qualified applicants who were interviewed by the subcommittee. He noted the question had arisen regarding whether there was a large enough applicant pool to make a good decision. The subcommittee concluded they felt very confident that the applicants were all very strong and they could make a recommendation without reservations.

MR. NOBLE, speaking as a member of the hiring subcommittee, reiterated that the hiring process was thorough and that he felt confident in recommending Todd Everts for the position. He explained he and REP. COCCHIARELLA were going to the next Legislative Council meeting (July 8) and, with the approval of the Council of the selected candidate, to accept the selection of the new LEA.

REP. COCCHIARELLA moved to recommend MR. EVERTS to the Legislative Council as the new LEA. REP. KNOX seconded the motion. Motion passed unanimously.

Other Staff Changes

MS. SCHMIDT said there would be an additional staff change, assuming the Legislative Council approved the recommendation of MR. EVERTS as the LEA. She said the staff hoped to choose from the applications received for the researcher position that was recently filled by Kathleen Williams who will begin August 1. MS. SCHMIDT said Ms. Williams is experienced in natural resource issues and comes highly recommended by former employers.

MR. NOBLE asked if it would be necessary to consult with the Legislative Council before initiating the hiring process for the new resource policy analyst.

MS. SCHMIDT said she didn't think that would be necessary, but that the EQC staff should confer with the state personnel division to determine whether it would be acceptable to select a new resource policy analyst to replace MR. EVERTS without reopening the position.

Legislative Reorganization Issues

MS. SCHMIDT explained that there had been considerable discussion among the legislative divisions about how best to reach the goals set forth in SB 398, the legislative reorganization bill. The legislative agency leaders decided to contract with Keith Colbo to analyze the situation and devise a short-term plan to facilitate communications among staff and management. She said legislative staff directors would be meeting to discuss MR. COLBO'S recommendations.

Rules and Procedures

MR. KAKUK said there had been one change to the EQC "Rules"-- the lead position for EQC staff was now called the "Legislative Environmental Analyst" instead of the "Executive Director."

SEN. BROOKE returned to the discussion of reorganization issues. She wondered if there were within SB 398 a distinct set of goals or would goals be determined in the meetings directors were now attending? She wondered why there had been a decision to reorganize and if the legislative agencies have met whatever goal they were trying to accomplish?

MS. SCHMIDT said there were four goals set forth in SB 398--1. To create a state government that was efficient and responsive to the needs of the people. 2. To strengthen the legislative branch capacity to administer its affairs effectively. 3. To provide means for coordination of branch activities. 4. To eliminate unnecessary overlapping and duplication of effort. She said she thought it would be appropriate for the branch to conduct an evaluation and report to the next legislature on successes. She said there was a move for the Legislative Council return to its

former position as policy maker for legislative activities and operations and she thought evaluating the effectiveness of the reorganization might be a good opportunity for their involvement.

SEN. BROOKE said she was concerned because the EQC was one of the agencies most affected by SB 398. She said she felt it would be important for the EQC to encourage the Legislative Council toward reaching any goals noted in SB 398. She said specifically they should determine if the EQC and staff are meeting the goals and if are they responding to the people better and more efficiently under the reorganization. She said the legislature wouldn't want to pass reforming legislation if, in fact, the reformation would have a detrimental effect.

SEN. DOHERTY agreed it would be a good idea to develop a set of criteria. He said that changes coming about as part of reorganization need to be tested and then if the new structure and operations aren't working as well as the old ones, the legislative agencies could revert to former structure and operations.

MR. PERSON said he thought a continuous monitoring of the effectiveness of the reorganization was a good idea. He also said the Legislative Council is a group with diverse points of view about the reorganization and consensus regarding reorganization will be a big challenge for them, too.

MR. NOBLE returned to the discussion of the "rules." The Council passed unanimously a motion to accept the change from "Executive Director" to "Legislative Environmental Analyst."

EQC INTERIM 1995-1996 WORK PLAN

MR. EVERTS explained that the matrix (EXHIBIT 1) was a tool for the Council to use in finalizing a work plan for the interim. He said they could pick and choose among the options to find a combination they felt strongly about. SEN. WELDON asked MR. EVERTS to explain who the "research staff" noted on the matrix would be and how it turns out to be 3.7 FTE. MR. EVERTS explained the research staff comprises the LEA, two full-time staff, a half time person and a .2 person who spends the rest of his time working for the Legislative Council.

SEN. WELDON asked if the FTEs indicated on the matrix included administrative time.

MS. EVERTS said that he had included the LEA position as part of research staff, even though a portion of that position's time was spent on administration.

MS. SCHMIDT said because the staff worked in a very collaborative manner, the need for administration was minimized. But, she said, she would estimate that with extra work surrounding the reorganization, the LEA would have to spend about half his time on administrative issues.

SEN. WELDON asked if administrative functions were factored into each of the matrix choices.

MR. EVERTS said to keep in mind that the FTE estimates were very much estimates and should

not be weighted too heavily as a deciding factor in choosing a work plan. He said the numbers probably did not reflect administrative time.

MR. NOBLE noted the staff was undergoing many changes and he encouraged the Council to help staff through this time to get their work done. He went on to say he thought HJR 10 would be a priority work topic. REP. COCCHIARELLA said the decision of what work topics were a priority should come about as a consensus of the Council.

SEN. BROOKE asked if, when using the matrix, they should try to keep the FTE numbers in mind to be sure the work they designate adds up to 3.7 FTE. MS. SCHMIDT said they were only guidelines; that staff was most concerned with finding out the priorities of the Council. She said the staff would find a way to make their decision work.

MR. NOBLE said he thought that the legislature felt that HJR 10 was a priority, and that was why he stated it was a priority. REP. KNOX said he agreed; that the legislature was very concerned with the issues in HJR 10 and that they felt they were issues that needed attention.

MR. NOBLE noted that there had been discussion surrounding enforcement in Council meetings for years and the Council always expressed interest in studying enforcement.

MS. SOUVIGNEY said she was interested in getting the point of view of SEN. MESAROS regarding the water study option because he is a former member of the now-eliminated Water Policy Committee.

MR. NOBLE said he planned to ask for SEN. MESAROS'S input on water. He said he wanted some more input on enforcement before moving on. SEN. DOHERTY said he agreed with REP. KNOX that enforcement is a priority topic for this biennium. He said he thought MEPA education was also a priority, particularly with its new changes. He said that he felt MEPA education has been a force in heading off problems and misunderstandings.

REP. COCCHIARELLA said she felt that because MEPA oversight was ordered by statute that it took priority over enforcement as a study topic. She asked about procedure; what would be the structure of the discussion regarding choosing a work plan.

MR. NOBLE invited staff to "revisit" the work topics on the matrix and to discuss each one briefly.

MR. KAKUK reiterated the menu-like nature of the matrix; he said the Council should look closely at the matrix to determine the proper balance of work topics; that the matrix was a guide and that they could create a work plan of their own if they chose.

MR. SORENSEN asked how HJR 10 relates to the natural resource agency reorganization. He was wondering if other agencies might be looking at the HJR 10 issues, and he suggested that there be coordination instead of duplication of effort. MR. KAKUK said that the Department of Environmental Quality (DEQ) was working on the enforcement issue and that DEQ director, Mark Simonich was on the agenda to talk about the DEQ's new direction in enforcement.

MR. EVERTS discussed the work topic, MEPA implementation. MR. NOBLE asked for Council discussion of MEPA. He asked SEN. MESAROS to comment regarding private property rights.

SEN. MESAROS said he proposed SB 231 dealing with private property rights in the last session and it was met with broad support. He said he felt strongly that SB 231 was very significant and that administrative rules should be reviewed.

SEN. GROSFIELD said, regarding the matrix, that if Option X in each case, assumes Y and Z, then the Council would be implementing SB 231 and the other legislative changes and also reviewing the MEPA rules.

REP. TASH noted that in the work plan there was mention of the Beaverhead national grazing suit as a matter of ongoing concern. He said that was a moot issue, because there is an agreed-upon settlement among the concerned parties.

MR. NOBLE asked MR. KAKUK to discuss the water policy study option.

MR. KAKUK discussed the water policy work topic, explaining that when the legislature eliminated the Water Policy Council, they increased the size of the EQC and gave the duties of the WPC to the EQC.

MR. TOLLEFSON asked for clarification of the phrase "active participation" as it relates to the water policy work topic. MR. KAKUK said it meant, for example, forming a water policy subcommittee and having four to six meetings over the course of the interim to focus on water issues.

MR. SORENSEN asked about the status of the development of the water plan sections. He recalled that the DNRC indicated they wanted to proceed by watershed basis, that they had some legislation that failed that would have solidified that. MR. KAKUK said he talked to DNRC and they had some proposals. They want to continue with the water plan in conjunction with the 19 decisions they made last interim on revamping the water plan. They would still like to focus on the watershed basis. They feel the legislation that failed would have been helpful, but it wasn't necessary for authority.

REP. COCCHIARELLA said she served on the conference committee for SB 398 and she was the one who proposed increasing the EQC to 16 members. She said the purpose of that was to address the issue of water policy issues. She said money had been budgeted for water policy and she hoped they could pursue some of the issues.

SEN. MESAROS, speaking as a member of the former Water Policy Committee (WPC), said that along with other mandated reviews and updates, the WPC reviewed the late claims water issues and agreed to review the instream flow issues. He felt the approach was beneficial, and they traveled to different areas to study the instream flow issue. At one time, he said, he had

thought a subcommittee would be the most appropriate approach for the EQC to take, but now questioned it. He said he did not recognize any major issues right now, other than updates on any projects that affect water policy and those could be addressed by full Council. He said he knew of at least one water basin that was forming an advisory committee to deal with issues. He said he thought the issues were up to date and would only require monitoring at this point.

SEN. BROOKE said that at the June second Council meeting the water policy work options were thoroughly discussed by MR. KAKUK. She wanted a further clarification regarding the Renewable Resource Grant and Loans Program. She got a strong impression from MR. KAKUK that the WPC had thought they should get more involved in that. She was wondering how the EQC should respond to that. SEN. MESAROS said that the Resource Indemnity Ground Water Assessment Tax (RIGWAT) was a program the WPC had definitely been interested in. What has to be considered is allocation of staff and EQC time to the whole body of work for the interim, and he wasn't sure that program was of highest priority. He recommended updates and possibly exploring the possibility of a subcommittee at some point.

SEN. GROSFIELD said the Council could invite a representative from DNRC to come and explain how they rank grant applicants. He said he was a member of the Water Development Advisory Council which was disbanded because they decided the DNRC was doing a good job of ranking the projects and the Water Development Advisory Council's advice wasn't necessary.

SEN. BROOKE reiterated her concern that the WPC had considered their involvement in the grants and loans program a priority and she did not think the Council should ignore it if it was important.

SEN. MESAROS said that as a former WPC member, he did not consider the Council's involvement with the grants and loans program a high priority.

REP. KNOX asked how soon before a legislative session the ranking of the grant applicants was usually completed. MR. KAKUK said usually it was by September or October.

REP. KNOX said he thought it would be appropriate for the DNRC to come and explain the process by which they rank applicants and if there was an EQC meeting after the rankings are completed in 1996, and before the 1997 session begins, that the list be brought before the Council for its review.

MS. SOUVIGNEY asked about the Council's involvement in oversight of recent water quality legislation. The WPC was involved, in a sense, with the nondegradation subcommittee, but she said it appeared to her that it had been separated out from the work plan reviewed at the last EQC meeting. MR. KAKUK said the review of recent water quality legislation is not included under "Water Policy Issues." That would be on the last page under "Follow-up and Legislative Oversight." He said it was correct that the WPC had been involved by forming a joint subcommittee with the EQC to look at nondegradation.

REP. COCCHIARELLA said she was concerned because water issues seem to rise to the top often. She asked MR. KAKUK what the Council would have to do to meet their statutory duties. She wondered how much Council and staff time would be needed to "analyze and comment" on all the things they were required, by statute, to do. MR. KAKUK said the Council could fulfill their duties by simply reading a report prepared by staff and then "analyzing and commenting" at a single meeting.

SEN. WELDON said that it seems one of the things the WPC was concerned about was that Resource Indemnity Trust (RIT) funds not go to fund general operating expenses of state agencies. He said that if the Council did nothing but review the grant applicants, they wouldn't be reviewing the actual applications and they would have no way to address the WPC's concern that the funds were going where they were intended. MR. KAKUK said that was correct, but that it wasn't necessary to review applications to comply with statutory requirements. He pointed out that there is no other body in the legislature that is reviewing water policy issues.

MS. SCHMIDT said that the WPC was getting more involved in water quality issues, but in the matrix it refers to policy issues in the broadest sense. Some of that would occur in enforcement studies, some in oversight of continuing programs; the language in the statute to create the Water Policy Council not only talks about water research and data management, but it also says that someone in the legislature should be concerned about all water-related matters and policy. The question is whether there any water policy issues the Council thinks they should be involved with now that they have the statutory responsibility.

SEN. DOHERTY said he would be interested in hearing any public comment.

JOHN DUNCAN, representing the SCD of Liberty County, said that there had been a recently completed \$100,000 water study of the Sweetgrass Hills. However, he said, they have run into a problem regarding classification of water. He said Liberty County had a water classification of 3B, "one classification above mud." He said they were actually getting their irrigating water from "high country" above the pollution (farming chemicals, as well as alkali and nitrates), but they are still classified as 3B. He said they had contacted the "water department in the state of Montana" to get the classification changed. He said he was meeting with personnel at the Sage Creek system to try to get a reclassification.

JIM STIMSON, coordinator of the Water Information System at the Montana State Library, NRIS, noted the Council's schedule would be full during the interim, and he said he understood the temptation to pare it down to make it manageable, but he said he thought the Water Policy Committee's role as provider of a forum for discussion of water issues was too important to be abandoned. He mentioned the ground water assessment and drought monitoring effort, and the important role the WPC played in providing a forum for updating the public and the legislature. He urged the EQC to have their meetings continue to function as a forum for information exchange.

REP. TASH asked when the Jefferson River basin ground water study would be available. MR. STIMSON said the ground water assessment program was ongoing and there are 21 basins being

studied and those are going to take about 3 years per basin. He also said there had been a funding crisis, since corrected, and the program is moving ahead. He said the ground water monitoring program is farther along, monitoring wells to collect water data from about 600 wells, but indepth study of ground water resources is a one basin at a time process.

MR. TOLLEFSON said he thought it was becoming clear that there was a need for a Water Policy subcommittee because there was so much discussion generated by water policy at this EQC meeting.

SEN. GROSFIELD said he agreed the WPC was a successful body; that, indeed, they had been so successful that they had worked themselves out of a job. He noted everything from water marketing to adjudication had been considered. He said the WPC had traditionally dealt with water quantity issues, as opposed to water quality issues and he thought most water quantity issues in the state had been successfully addressed. He said that if an issue came up, such as wilderness dams when he was on the WPC, the EQC could look at it. He said he didn't think a subcommittee was necessary. He suggested that some of the statutory requirements might not even be necessary anymore.

MR. EVERTS explained the next possible work topic on the matrix, oversight of SB 382.

MR. NOBLE asked if there was any Council comment on Council oversight of SB 382.

SEN. GROSFIELD said he thought the EQC should stay apprised of the progress of implementation of SB 382, and that would be enough of an "oversight" role.

MR. NOBLE asked if the Council was interested in one of the members being in the SB 382 work group.

SEN. BROOKE said she thought SB 382 should be a higher priority work topic than some of the others on the list. She thought it would be important to study the effect of the elimination of joint and several liability and not setting out to get rid of it. She said she thinks a representative body in the legislature should look at the consensus between the DEQ and industry.

MR. NOBLE asked staff to review briefly Environmental Risk Assessment as a possible work topic. MR. KAKUK explained Environmental Risk Assessment.

SEN. BROOKE asked MR. SORENSEN and MR. TOLLEFSON to tell the Council if there had been any progress in their exploration of risk assessments. MR. TOLLEFSON said there had been little progress and said he would like to propose a "total package" of priorities in the near future. MR. SORENSEN said he thought that risk assessment had been done over the history of the EQC and he suggested it be pursued on a low level basis and focus on resource identification and identify goals and threats to those resources.

MR. MARX asked what "trial run" meant as mentioned by MR. KAKUK in relation to a risk assessment study and if it meant the first step of a major full-scale environmental risk assessment program. MR. KAKUK said a trial run would be the EQC doing its own internal environmental

risk assessment program. He said it would not necessarily lead to a larger program unless that's what the Council wanted.

SEN. GROSFIELD asked about option X under "Risk Assessment" on the matrix. MR. KAKUK said if Council wanted to act as a catalyst, Council staff could write the grant applications to attempt to fund a risk assessment program.

MR. SORENSEN said he brought a document regarding a risk assessment done in the Flathead Valley; the kind of thing that might be useful in considering a state program.

SEN. GROSFIELD asked if there were an internal environmental risk assessment program, would the findings be used just by the EQC--and how does it fit in with the plan?

MR. KAKUK said if the EQC could come up with a list of environmental "priorities," they could have a quantifiable method for deciding not only what issues would be priorities, but to determine what issues should be turned down, as well. They could make more informed decisions to take to the legislature about where to place limited resources.

MS. SCHMIDT asked MR. SORENSEN what he was envisioning regarding an internal ERAP.

MR. SORENSEN said he saw it as a first step in a larger process. MR. TOLLEFSON agreed; that he envisioned it as a prototype. MR. KAKUK noted options X and Y would necessitate going back to the beginning with full public involvement.

MR. NOBLE asked staff to discuss the work study topic of Continuing Oversight Responsibilities.

MR. KAKUK and MR. EVERTS discussed Continuing Oversight Responsibilities.

MR. NOBLE said he felt the oversight responsibilities would only require awareness and as an occasional agenda item. REP. KNOX said he thought that was appropriate and that staff had enough to work on already.

MR. NOBLE said he wanted to make sure to leave open time for discussion of issues that might come up. He asked for a discussion of the work plan among the Council.

MR. TOLLEFSON made a motion to accept option X under "MEPA" on the matrix, consistent with Council's obligation; option Y under the "HJR 10" and to create an enforcement study subcommittee; option Z under "SB 382," option Z under "Water Policy," and keep open an option to create a subcommittee as water issues emerge, and option Y under "Other Potential Study Topics. He noted that according to the estimates provided by staff, that would equal 3.4 FTE, leaving some time to address unforeseen issues.

SEN. GROSFIELD asked about MR. TOLLEFSON's reference to an enforcement subcommittee. He wondered if MR. TOLLEFSON also envisioned a MEPA subcommittee.

MR. TOLLEFSON said that in the past MEPA had mostly been handled by staff. He wasn't sure how a MEPA subcommittee would work. SEN. GROSFIELD said it was true that staff had handled it in the past, but now the rules would be revamped, requiring a lot of time and input by the Council.

MR. TOLLEFSON said the expanded Council will have a difficult time getting anything done without subcommittees.

SEN. GROSFIELD said he came up with the same approach as MR. TOLLEFSON except he thought it would be better to adopt option X under the "enforcement study" and if there's a subcommittee let them figure out the scope of the study. He agreed it was important to leave staff time open for upcoming issues.

MR. TOLLEFSON said he would amend his motion to option X under "enforcement."

MS. SOUVIGNEY noted the motion didn't discuss legislative oversight issues. Specifically, she was concerned that because the EQC spent two years on the nondegradation study, there should be some consistency and they should spend more time monitoring what goes on with the water quality bills passed in the last legislature. MR. TOLLEFSON said he thought that was why it was important to have a water policy subcommittee.

MR. NOBLE suggested adding the motion, "with the balance of time to be spent on emerging issues."

SEN. WELDON said he had added up the FTEs for the amended motion and the total was between 2.8 and 4.9 FTEs. MS. SCHMIDT said the FTE estimate was a gross estimate and would shift as the biennium went by. She added that followup and legislative oversight issues can be very time consuming. She used as an example the Silver Bow Creek issue on the agenda and she projected a large portion of the meeting would be taken up with that discussion.

REP. COCCHIARELLA seconded MR. TOLLEFSON's motion as revised by SEN.

GROSFIELD.

SEN. GROSFIELD said several of the legislative oversight issues deal with enforcement so enforcement will probably be an oversight issue. He also noted that one of the goals in HJR 10 is to aggressively pursue additional funding to cover that study. He said if that means maybe a subcommittee can devote some work to raising that money.

REP. ORR said he was glad to see the Council adopt option X for HJR 10 because it was a priority of the legislature. He referred to a letter from the Governor (EXHIBIT 2). REP. ORR explained the gist of HB 412, the "find it and fix it" bill, whereby a business could come to the state to get assistance to fix environmental problems instead of getting fined. He said they had been unable to work out some problems with the bill and they let it die. But, the governor

recommended that the Council spend some time on this issue. MR. NOBLE said by adopting option X, there would be time for that.

REP. KNOX said he wanted to restate some of his reservations about environmental risk assessment. He said that although he would support option Y he would keep a very close eye on a risk assessment project's progress. He was concerned it could become a "bottomless pit." He noted the subjectivity of such an assessment and he was afraid it could end up casting the EQC in a negative light.

SEN. MESAROS asked if they would address whether to have subcommittees in the motion.

MR. NOBLE said he thought subcommittees should be optional until the Council gets a better feel for the demands of the work load.

MR. NOBLE called for a vote on MR. TOLLEFSON's motion and the Council voted unanimously to accept it.

SEN. GROSFIELD said he was looking at the goals under HJR 10 and he wanted to make sure that it was noted in the work plan that the resolution calls for consistency and appropriateness. He said the work plan mentioned consistency but not appropriateness.

REP. KNOX said he wanted to emphasize the importance of consistency, as it was an issue that had come up many times in the audit hearings, as well as from all segments of the public.

ENFORCEMENT STUDY

MR. KAKUK said that at the request of the Council, the staff had prepared a review of the Council's activities in the past interim looking at the first goal in HJR 10--to identify the environmental enforcement framework. He reminded the Council that the EQC had decided in the last interim that "enforcement" meant more than just penalties and fines; it could also be education, and technical assistance. He introduced EXHIBIT 3, a rough outline of enforcement schemes, an overview of what's being done throughout the country to ensure compliance. He also introduced EXHIBIT 4, a survey of enforcement practices among various state agencies. He said it should be noted by members of the EQC that the purpose of the survey is not to identify problems, but to provide Council members with a basic introduction to policies regarding environmental enforcement.

MARK SIMONICH, director of the Department of Environmental Quality, said he saw enforcement as something that had to be addressed. He said they recognized malfunctions in enforcement responsibilities of state agencies and the need to fix the problems. He said one of the reasons for HJR 10 is the need for making better decisions faster. He said the reorganization would better integrate the decision-making process. He said the first step, though, would be to look closely at the decision-making process. The DEQ is an environmental regulatory agency, but he believes they have a responsibility to the people to provide service and provide solutions, and to focus on prevention. He said he thought in the past there had been an attitude of policing wherein businesses were issued notice of non-compliance and then the agency sat back and waited. He thinks that is an inappropriate scenario. He has been very serious about making sure

all employees understand they are working for a new department and they are looking for new ways to provide the best service to Montanans. They are working on a procedure manual for enforcement of water quality. He said he would bring it to the EQC for review. The DEQ will be involved in the promulgation of rules as well, and MR. SIMONICH requested the EQC give some assistance with that process. Making rules consistent will be a priority.

MR. MARX asked MR. SIMONICH to tell the Council about the public reorganization task force. MR. SIMONICH explained the make up and purpose of the task force. (EXHIBIT 5)

MR. NOBLE said he hoped MR. SIMONICH would keep staff updated about the progress of the reorganization.

SEN. BROOKE asked if the task force would be comparable to a transition team. MR.

SIMONICH said yes; it would be the best way to keep the public involved.

MR. SORENSEN asked MR. SIMONICH for his thoughts about the relationship between the EQC enforcement study and the efforts of the DEQ and the task force. MR. SIMONICH said reorganization took a major step toward bringing all the regulatory programs under one roof, but not all of them. (SEE EXHIBIT 6.) He said the process of bringing it all together will involve getting advice from the EQC.

REP. COCCHIARELLA asked MR. SIMONICH if he had ideas for how to bring credibility back to the rulemaking process. MR. SIMONICH said the departments must focus on intent of the legislature as a logical basis for each rule.

REP. COCCHIARELLA said she had worked hard at the beginning of the session to write language agreeable to industry on two bills to make sure the board wrote the rules correctly. She asked MR. SIMONICH in what way he would interact with the Board. MR. SIMONICH said DNRC had a board and there was a similar situation with divided rulemaking authority. He said they had a good, cooperative relationship with that board and he will try to do his best to develop a good relationship with the new Board of Environmental Review. He foresees staff and the Board working together.

SEN. DOHERTY asked about the time frame for the enforcement manual. He asked if there would be more drafts and whether it will be a guide to issuing citations. MR. SIMONICH said it was in draft form and they hope to get it finalized in late summer or early fall. He said it was his understanding that the manual would be a procedural guide and tell what sorts of things to consider when making decisions. But, he said the procedural manual should be in full compliance with their existing rulemaking authority.

SEN. DOHERTY asked how the former DNR board and the former Board of Health will be meshed together. MR. SIMONICH noted that SB 34 abolished the Board of Natural Resources. Some of their functions go to the new Environmental Board of Review. That authority is

specific to the Major Facility Siting Act with the other authority going to the Department of Natural Resources and Conservation. All other existing authority that was previously vested by the Board of Health for environmental programs will remain with the new Board of Environmental Review. The rulemaking authority for reclamation that statutorily was vested in the State Land Board is now changed to the Department. The decision making authority relevant to land reclamation will now go to the Department. This was already in statute. They have a deadline from EPA to submit a State Implementation Plan for air quality in East Helena for August 2, but they will probably not submit it until August 4. The goal is to get a Board appointed before that date. The new Board of Environmental Review will be a 7-member quasi-judicial board; one person has to be an attorney, one a hydrologist, one has to have background in environmental science of any kind, one must be a county health officer or health practitioner, one has to have experience in local planning, two members have no requirements. It should be geographically distributed.

SEN. DOHERTY said one of the areas that seems to be a sore point in the scheme of enforcement, when they got down to the nitty gritty with State Lands and the Department of Health over water quality, is a lot of fingerpointing to make someone else do the work, every one blaming the other guy. He asked MR. SIMONICH if he had considered the environmental audit and, if so, what MR. SIMONICH saw in terms of enforcement policy when those functions ended up under DEQ's responsibility. MR. SIMONICH said with the reorganization putting everyone under one authority, such problems won't occur as much.

MR. KAKUK said staff will come up with options for how to reach goals within the scheme of enforcement.

MR. NOBLE recessed the meeting at 12:15 for lunch. The Council reconvened at 1:25.

MISSOURI RIVER LAWSUIT

MR. SIMONICH said that Montana has had a disagreement with the Corps of Engineers over management of six dams on the Missouri River. The only one in Montana is on the Fort Peck Reservoir. The argument has been that the Corps has been inappropriately managing the river by draining reservoirs for the benefit of navigation traffic on the lower part of the Missouri River. The state has been involved in an organization for several years that includes governors' representatives from each of the eight states in the Missouri River Basin, Montana, Wyoming, South Dakota, North Dakota, Iowa, Kansas, Nebraska, and Missouri. They've been working together to get to a consensus on fine tuning changes each year. The Corps wouldn't recognize recreation as one of the prime benefits of the system. Montana, North Dakota and South Dakota have twice taken the Army Corps of Engineers to court over the master manual that guides them in operation in the reservoirs. The Corps finally agreed to review the master manual and try to come up with new working documents in terms of how they will operate the reservoir. The Corps recognized that recreation is of equal importance with the river's other uses and should consistently be considered as such. The review has been going on five years and the Corps has spent 14 million dollars on that process and last July came out with a draft EIS. The preliminary draft was 5,000 pages with the draft only slightly shorter. The Corps went through a public

comment process September through March 1, 1995. That included hearings from New Orleans to Helena, three in Montana; in Glasgow, Lewistown and Helena. The crowds were not as large at the hearings in Montana as in other parts of the country. He attempted to stress at the meetings that the reservoir level minimum full level should be much higher than maintained in the past. In October Colonel Thuss, who is in charge of the project, met with each governor and said he wanted to shelve the project. He said recommendation about shortening the navigation season had made lower states furious, and that it did nothing about raising level of reservoirs. It didn't help the economic balance at all; the lower four states accumulate about two thirds of all economic development benefits. The Colonel proposed to the governors to use the Missouri River Basin Association as an entity to begin a collaborative process to come up with alternatives to satisfy needs of the basin. When the Corps looked at more that 300 alternatives, they only looked at operational changes; whether they should let more water out of the reservoir or less and when. Endangered species (the sturgeon, the least tern and the piping plover) had become an issue, and the Corps was recommending habitat maintenance, creating flooding and erosion and requiring structural changes. The governors agreed to take on the project. The MRBA hired a facilitator, the River Group, made up of the Consensus Councils from each of the 8 states. The River Group hired Miranda Downing of St. Louis and Gerald Mueller of Missoula. They began the process and then about a month ago, each of the governors received a letter from Colonel Thuss that he had decided because of the public comment he had received that no one liked the draft and they were going to start over from the beginning and the new draft would be available in 1997. MR. SIMONICH interprets this to mean the lower states have put political pressure on Washington to keep things from happening to resolve the issue. He said it's not a

partisan issue, it's a basin issue, that the lower states have more political clout. He said the Colonel said they would like to start a collaborative process among the states and asked them to recommend a facilitator. Governor Racicot and MR. SIMONICH met with the governors from North Dakota, South Dakota and Wyoming and with Colonel Thuss. They realized they have no other recourse but to go along with the Colonel's plan, and to say they want the MRBA collaborative, already started, to lead the way. He said they would be meeting with Colonel Thuss and the assistant secretary of the army, to clarify any discrepancies between Colonel Thuss' plan and what Washington wanted to do to get process back on track. They fear that the process will be too contentious and will get muddled with so much disagreement that Fort Peck Reservoir will become lower and lower to the point where recreational use is imperiled. The DNRC is the lead agency and Bud Clinch is the Montana representative now.

SILVER BOW CREEK CLEAN UP ISSUES

NEIL MARSH, Section Supervisor of the Montana Superfund program, explained the background of what the state has been doing over the past four years regarding the issue. He said the Creek had been contaminated for 80 or 90 years. The state and ARCO have been conducting an investigation of the situation under an administrative order to look at the amount of level of contamination. MR. MARSH showed a series of slides--1. The stream as it appears near the Rocker area, which indicates tailings deposited all along the creek, including in ground water. MR. MARSH distributed a copy of the state's proposed plan (EXHIBIT 7). He said levels of copper and zinc in the creek are five to ten times greater than the acute water quality criteria during low flow conditions. Slide 2 was taken near the Rocker area where tailings are in the

creek. Slide 3 was taken near Ramsey Flats, downstream where the tailing deposits start to get larger with 800,000 cu. yds. tailings in the area. The stream has cut into the tailings. He said one of the most significant problems they found was that the stream bed itself was contaminated with fine grain tailings. He said a factor that must be considered are the railroad embankments that were built using mine waste. Where the stream abuts the embankment, there will be some removal of the embankments to protect the stream. Slide 4 was of Durant Canyon of Silver Bow Creek, that is cleaner and they would like to see this canyon be used for recreational purposes. Through Deer Lodge Valley the stream meanders and the tailings deposits become thinner but more widespread. He explained there were 25 miles of stream and 2.5 million cu. yds. of tailings deposits and another 100 to 200 thousand yards of contaminated rail materials and about 100,000 yds. of in-stream sediments involved. For about 2 years ARCO, under the state's guidance, conducted a remedial investigation and then they spent another two years looking at clean up options. The feasibility study was completed in May and the state introduced its plans in June. Clean up under Superfund law must be protective of human health and the environment and meet applicable or relevant and appropriate legal environmental standards. The state has issued a list of those. They evaluated alternative plans on how they met those two criteria and other criteria listed on page 18 of EXHIBIT 7. The most limited action they seriously considered was STARS, "stream bank tailings and revegetation studies", an effort sponsored by DEQ to look at ways to treat tailings with lime and then revegetating them. The state feels the STARS method is effective in some cases. The other alternatives they looked at involved total removal of all tailings and placing in a repository at a remote location. There were also various combinations in between, because they determined there are areas where the STARS cannot be applied

effectively, particularly in areas where the tailings come into contact with ground water and where the tailings are subject to erosion. The summaries are in EXHIBIT 7, including costs. The reason they recommend Alternative 6, to remove most of the tailings is that they believe it's very important to get most of the materials out of the 100-year flood plain. The materials left behind, even if STARS-treated, they feel would be a risk. They are proposing that some of the tailings be STARS-treated. They are proposing to move the tailings to either Opportunity Ponds or a new regional repository in the Brown's Gulch area just north of Ramsey. The issue, the state feels, is that there are too many limitations with the future land use of the near-stream repositories and more significant maintenance problems in the future. In terms of actual protection of the stream the state believes that relocation are adequate. They have asked for public comment whether they want the near-stream repositories or they want the tailings moved to a regional removal area. He said the state will let the public decide. The additional cost is about 10 million dollars. The state wants to find out if the people think it's worth it. The one other area where the state is proposing to remove materials is the 73,000 cu. yds. of instream sediments. It must be removed to make the water clean enough for a self-reproducing trout fishery. He said that's a long term goal because first they have to make sure nothing more is coming down from Butte Hill. He said the final decision was scheduled to be made by December and that they had a public hearing scheduled for July 10, and will take comments through August 6 or 7, so the decision is not set in stone.

MS. STASH said she was there to represent ARCO because under Superfund, there are parties that implement and pay for the remedies that are enacted under Superfund. She said she was not

representing the only group that will be asked to pay for this--the state, she said, has indicated that certain railroads will also be named as potentially responsible parties as well as the state of Montana. She said that what ARCO is proposing is not extremely different from the state's proposal, but it manifests itself in the amount of money to be spent and the difficulty of doing the remedy. She explained ARCO was proposing a combination of select removal of tailings and suggesting that removal occur in areas where tailings are proximate to the ground water. She said ARCO agrees with the Montana State University's analysis that the tailings revegetation treatment technology does not work if the tailings will be inundated with ground water, so in those areas they suggest the tailings be removed to areas that are higher and drier, but are near the site they came from. That would be combined with an extensive use of the streamside tailings and a revegetation study. She called the Council's attention to a photograph of STARS technology as used on the Clark Fork River. She said Senate Bill 382 had been much debated, and she felt most of the debate centered on the "who pays" provision, but there was a less debated and probably more agreed upon provision that talked about how remedy decisions in Superfund should be made. She said ARCO doesn't think the state had reasonably anticipated future land and resource use. She said ARCO was in the process right now of buying most of the property along Silver Bow Creek to control types of development in the creek corridor. ARCO feels there are only two appropriate uses for a stream corridor and they fall in the area of agriculture and recreation. She said ARCO feels that by buying the property they can insure long term land uses that are appropriate when combined with the remedy ARCO is proposing. They do not want to turn it into a fenced-off site, which, she said, as property owners, would be their prerogative. They support a greenway project, as they think that's really the only use for

the land. They don't think the state's plan, although it doesn't preclude that, really took that into account. They also don't think the state program took into account the statutory preference for treatment. The state's proposal involves moving tailings to Opportunity Ponds while ARCO is proposing is "100 percent treatment." She said that was not taking into account the desires of the people of Opportunity, and also that ARCO was wary of the risks involved in trucks transporting the tailings. She also said ARCO feels their plan is more cost-effective than the state's. She said she thinks the legislation that was passed is very clear in saying that when money is to be spent on a Superfund clean up, the cost must be balanced against the benefits, or the amount of risk reduction that will come about from the expenditure of money. She introduced a chart which she said demonstrated that the state's proposal was not cost effective. She said MR. MARSH didn't explain the most likely ways for metals to get into the creek. She said the biggest way the metals get in the creek is through erosion. She said even without any treatment at all, just putting in some storm water controls that risk is substantially reduced. By adding STARS treatment, she said, and then revegetating, the amount of erosion that can occur is limited. She also said ARCO thinks portions of the site should be considered at a later time.

JEFF SMITH of the Clark Fork/Pend Oreille Coalition said his group comprised recreationists, outfitters and businesses who have a mission to restore and protect water quality throughout the Clark Fork River basin. They have been actively involved in the Superfund clean up of Silver Bow Creek. He said he was there to express the groups's support of the state's recommendation to remove the contaminated mine wastes from the creek and its flood plain. They believe it is the only way to restore the health of the creek and open it to recreational, residential and

agricultural use. They are concerned that STARS has not been proven and that there are problems with it, mainly that it doesn't always work and can be nullified with heavy erosion. They recognize removal requires a large investment of time and money, but they think it is the only way to satisfy Superfund law.

SEN. TOM BECK said that he was member of the committee that initially decided how to spend the one million dollar donation from ARCO to come up with a plan to find a way to clean up heavy metals. He said that although STARS is new, there have been proven cases that it works. He reported that his neighbors had revegetated STARS-treated land. He said he represents the people of Opportunity and he's concerned that the area is too full of wetlands to put more contaminants. He also said he was concerned that contaminants would be spilled during a moving process. He said that the people of his district want to see the problem solved and get fish growing in the stream as soon as possible, not in 15 or 20 years.

JON SESSO, Planning Director for Butte-Silver Bow, spoke for the community of Butte. They will release the county's formal draft position on this issue on July 12 and will hold a public meeting on July 26, and pass a resolution regarding a formal position on August 2. He said he felt the real basis for the decision was to concentrate on three central issues--whether they will remove the tailings and put them in a repository out of the flood plain, whether once the decision is made to remove or relocate, how much will be removal and how much STARS, and the instream sediment issue, as no one knows what removing sediment will do to the creek. He said he thought the money could be used to clean more stream instead of moving the tailings, and that

Butte should not send its waste to another community. He said what they really should be concentrating on was moving tailings out of water's way and after that, deal with the fringes. He said they should use the STARS technology and not use trucks. He noted the ultimate importance of all working together in cooperation with the other efforts to clean up the Clark Fork.

CHERYL BEATTY, Chief Executive for Anaconda-Deer Lodge County, said the community and the county were going through the process of adopting a formal position so she was speaking for herself and members of her community. They went through a process with a community-based clean up group that has facilitated the creation of the Jack Nicklaus golf course. She said some of the remedial efforts on the golf course involve STARS. The community of Opportunity does not want any more tailings, or the activity associated with bringing them there. The citizens of Anaconda/Deer Lodge want to know who will be responsible for long-term management of the creek area. They are concerned with land use needs and they want land use and the remedy working together. She also said the community is very excited about its own future and the citizens are anxious to get the creek cleaned up.

JIM CAMBICH, resident of Butte and representing Project Green, said the Project was sponsored by Montana Energy Research and Development Institute to see what the community wanted the creek to be. The public hearing process has involved about 800 citizens from Butte, Anaconda, Rocker and Ramsey. They have envisioned through the process many different land uses including recreational, economic development activities, long-term management and landowner issues. They feel the clean up is important to their future. He said they were inspired

by the community effort that ended in the golf course project. They are concerned because the creek is still being polluted and they think it's imperative that the effluent be looked at carefully.

SEN. DOHERTY asked MR. MARSH if the state's alternative was adopted whether the greenway would in any way be foreclosed?

MR. MARSH said that in the state's opinion the state's proposed alternative is fully compatible with revegetation for recreation. He said the state feels that what they have proposed is a thorough clean up that meets the objectives set forth in legally mandated requirements for Superfund clean up, and in doing that, the plan is compatible with recreational use of the stream.

SEN. DOHERTY asked MR. MARSH what the time frame differences were from beginning of operation to end of operation between ARCO's proposal and the state's.

MR. MARSH said ARCO's proposal was similar to the state's alternative 3, and that it might be four years for ARCO's proposal versus five years for the state's.

SEN. DOHERTY asked MR. MARSH if by adopting the state's proposal if they would be creating another problem that is going to have to be dealt with in the future.

MR. MARSH said the state's opinion was that they thought it made sense to consolidate all materials into a regional repository, and they wanted to get public opinion on the plan. He

explained there are two alternatives--one is in Brownsville--with the advantage of being close to the upper stream, and one in Opportunity. He said that three years ago the state got together with local groups in Butte and did a mine waste repository siting study to look at various areas where if they were to remove source materials from various parts of Butte they would have to handle those materials in a way that was environmentally sound. What was done was to look at that study and see how it would apply to Silver Bow Creek and whether there were adequate locations that were fairly close. There were a number of areas, including Brownsville, judged to be environmentally safe. He said that doesn't mean it's a preferable location because it's an uncontaminated area and Superfund weighs against the idea of contaminating uncontaminated areas. With respect to Opportunity, he said, it's a whole different situation. Right now the Opportunity Ponds are somewhere on the order of 300 million cubic yards of tailings about 60 feet deep and covering four square miles and to add 1.8 million cu. yds. to that the state thought was a fairly insignificant additional impact. He said there is no way to fully remediate Opportunity Ponds.

SEN. DOHERTY said that MS. STASH talked about the state becoming a potentially responsible party. He asked MR. MARSH who was attempting to make the state a potentially responsible party?

MR. MARSH said potentially responsible parties on Superfund sites are determined by the EPA. They do the actual noticing of the parties. He said that regional administrator, Bill Yellowtail, will be the one who finally signs off on the decision and issues the record decision. MR.

MARSH said he thinks it will be a concurrence with the state's recommendation. The initial notice, MR. MARSH said, was to ARCO because they were the obvious cause of most of the tailings along the creek. He said there are also contaminated railroad materials and when they finished the investigation, they proposed that the EPA issue notice to the other people who were owners or operators of property that was associated with the contamination. MR. MARSH said the state of Montana inherited some of the railroad property in some of the deals that were made pursuant to the establishment of the Port of Montana in the Silver Bow area and for some of the Old Milwaukee Mine. That's why the state would be noticed as a responsible party.

SEN. DOHERTY asked MR. MARSH who had the idea to make the state a potentially responsible party and who was advocating making the state a potentially responsible party?

MR. MARSH said no one was advocating that. The state is an owner of property that is contaminated and, as such, under Superfund law, they are a responsible party.

MS. SOUVIGNEY asked if the state would agree with ARCO's analysis of risk factor and the cost of what the state is proposing and this being so much higher than the state's proposal.

MR. MARSH said he wasn't quite sure what risk factor means in this case. He said in Superfund that risk assigned through theoretical studies is an estimated cancer risk. This is a site where damage to the creek is measured in cancers in animals, specific risks associated with the creek. MR. MARSH pointed to ARCO's chart of risk assessment versus cost and said he questioned

whether it accurately depicted risk levels. He said the chart showed ARCO's plan using about 30 million dollars and the state using 60 million dollars but that the chart should show that ARCO is not reducing risk as significantly as the chart indicated. He said by asking the question whether it was worth it to pay the additional 30 million dollars to get to a certain point of risk, that ARCO's type of graph biases the analysis--it says, "Okay, you don't have to give very much to reduce the risk significantly," but he questions whether the risk levels are accurately represented.

SEN. BROOKE asked MR. MARSH if he had seen the analysis from ARCO that was presented to Council about Senate Bill 382. (EXHIBIT 8) She said she had questions about it.

JOHN GEACH, Acting Administrator of the Environmental Remediation Division of DEQ said he had a handout on SB 382 that he would be passing out.

SEN. BROOKE asked MR. MARSH why the state was discussing leveling railroad embankments that are already in place. MR. MARSH said he didn't say there would be elimination or removal of entire embankments. He said that when an embankment comes down into the stream and that embankment is made of contaminated waste rock, that the state's plan would envision removing three to four feet of that embankment to remove tailings that are in contact with the creek and replace it.

SEN. BROOKE referred to MR. SESSO's comment that the goal is to get all the tailings out of water's way. She noted that the state's proposal is dealing with surface water as well as ground

water to get the tailings out of water's way. She asked MR. MARSH if he could confirm that the ground water has to be considered. MR. MARSH said the state thinks there are areas along Silver Bow Creek where there is definite interaction between ground water and surface water.

SEN. DOHERTY asked if Senate Bill 382 in any way regulates or governs the clean up.

MR. MARSH said it did not. He noted that MS. STASH referred to this being done under federal laws, but that it is actually being done under state law and that the revisions to SB 382 would not apply to this action.

SEN. DOHERTY asked if there had been any legal analysis that would indicate otherwise, that SB 382 is in any way governing this clean up.

MR. MARSH said that the order that was in place with ARCO actually requires that this action be done consistent with federal law.

MS. STASH said the state has always used the state law in addition to the federal law in similar cases.

SEN. DOHERTY asked if that meant the state law prior to SB 382.

MR. MARSH said the state law prior to changes by SB 382 and the federal law would be the two controlling vehicles in this action.

SEN. DOHERTY asked MS. STASH if SB 382 does not in any way govern this clean up, what's the point she was trying to make regarding SB 382?

MS. STASH said the order that MR. MARSH was talking about will not govern the clean up. There will be an additional order. She said the state EPA will use both the state and the federal law as they have in the past to govern the actual clean up. She said that currently what drives much of the clean up they do is state law--the Clean Water Act as implemented by the state, more than federal law, so ARCO thinks it will have a lot of relevance to how the clean up is conducted.

SEN. DOHERTY asked EQC staff if there was any legislative history, because he did not recall SB 382 being used to govern currently existing projects when it was being discussed by the legislature.

MS. STASH said that because the project has not started there will be an additional set of orders. She said she guessed it would help to govern the work that's done in the future.

MR. EVERTS said that the salient clause in terms of any actions that had started prior to this bill would not be applicable to in Montana. He said he would get the exact language.

SEN. DOHERTY said they were aware of the natural resource damage claim questions about actions that had been started prior to the changes brought about by SB 382, and he didn't remember any discussion of language that would affect prior actions during discussion of SB 382.

MR. MARSH said he thought most of the discussion during the legislature actually dealt with sites that were not federal sites on the national priorities list and that is one of those (priority) sites.

MR. EVERTS read the exact language from SB 382--"This act does not apply to civil actions commenced or begun prior to the effective date of this act or to claims based on those actions."

SEN. BROOKE said as she understood from ARCO's presentation on this issue, that MS. STASH's material was referencing the introduced bill and not the bill that was passed. She said she recalled discussion of the pilot project and the funding of a million dollars and an enforcement study about the efficacy of doing away with several liability, but she said she did not recall other aspects that ARCO's handout indicates were part of the bill. SEN. BROOKE said that may be where the confusion is; the difference between SB 382 as introduced and the bill as it was finally passed.

MS. STASH said that what the current law says is that activities related to benefits should be related to costs. She said she thought MR. MARSH used the wrong example. Referring to her

chart, she indicated a line she said was graphing metals in the creek. She said that was one example of risk factors. She said one could also plot benefits--benefits to the community. She said the charted assessment looks strictly at copper and zinc. The reason there is so much drop in risk initially, has to do with the fact that most of the metals are coming from erosion and by eliminating erosion, she said, 60% of the problem would be eliminated. She said through other measures, the risk decreases more and more, but you never get to zero. She said ARCO's estimate of the cost of the state's remedy was between 50-100 million dollars.

MR. NOBLE concluded the discussion, saying it was not the EQC's role to take sides on the issue, but they would hope the best solution would be found through collaboration, and the money be used in the wisest way.

STATE LANDS FOREST MANAGEMENT PLAN/EIS UPDATE

MR. PAT FLOWERS, Chief of the Forest Management Bureau in Missoula, gave background on the management plan. (EXHIBIT 9) He considers it a strategic plan, not like other forest allocation plans. State Lands was concerned with the amount of time a direct allocation plan would take, as well as the problem of uses always changing. Their plan is broader and deals with a philosophical approach to managing trust lands. The plan will be used to provide the DNRC personnel with consistent policy direction, as well as to clarify policy on the use of trust lands. The plan applies to about 660,000 acres, all forested trust lands. The draft EIS provides six management alternatives for trust lands. The plan is an attempt to address the controversies currently surrounding managing trust lands-- how do other statutes apply such as endangered

species act and water quality laws when the purpose of the land is to generate funds? There is also the question of whether they are mandated to provide short or long term returns or something in between. The beneficiaries of various trusts have become more interested in the last two years in short term returns. To develop core concepts to consider in forming a management plan, State Lands received input internally, from the public, and from focus groups in the areas of wildlife, recreation, timber and watershed. From that process came alternative strategies including "no action" as well as various management emphases for the key issues. MR. FLOWERS said the 45-day comment period on the draft EIS will end August 4 and he encouraged the Council to comment. Following that, they will examine suggested modifications, incorporate them and designate the best alternative for approval or rejection of the Land Board. MR. FLOWERS also said the DNRC would wait to implement HB 201, which calls for a sustained yield study, until an alternative is selected, as the selected management plan will drive the study.

REP. KNOX asked if the 660,000 acres of timberland managed by the DNRC was considered commercial timber land and if so how did they determine what was and wasn't commercial. MR. FLOWERS said they had an inventory system done on a statewide basis to determine cover and volume per acre.

REP. KNOX asked how much of the land was determined to be on the borderline between commercial and non-commercial land. MR. FLOWERS said there were about 500,000 acres of

classified forest land, and so he would estimate there are 160,000-200,000 acres of what some would call marginal or that are used for a mix of purposes.

REP. KNOX asked if that land will be used in the sustained use figures. MR. FLOWERS said calculations for sustained yield were based on classified forest lands.

SEN. CRISMORE asked if the DNRC was working with the forests to start implementation of HB 201. MR. FLOWERS said as of July 1 they were given the budget to implement that. He said the results of the sustained yield study will apply to the sales that are initiated after the study is completed.

MR. SORENSEN asked if there was any consideration of the potential for land exchanges with the Forest Service or with private companies, for efficiency. MR. FLOWERS said he recalled that under some of the alternatives there was potential for land exchanges.

SEN. BROOKE asked what the time line was for the study ordered by HB 201 and whether it was under the auspices of the Department. MR. FLOWERS said the Department and the Land Board would initiate the study. He said much depends on the response to the draft plan, and if they don't get much response they can start sooner, because the alternative management plan will be selected.

SEN. BROOKE asked when the decision would be made about a time line for the study.

MR. FLOWERS said they couldn't make a decision yet, not knowing how much revising was going to be required by the feedback on the draft EIS. He said they hadn't gotten any extra money to do the plan, so it's been a drain on them.

SEN. BROOKE asked if 45 to 55 million board feet will control the alternative selection process. MR. FLOWERS said they would continue to operate under that figure.

MR. TOLLEFSON asked how long the study would take to complete once it's started.

MR. FLOWERS said he guessed about six months. He said only 30,000 dollars was appropriated to do the study, which he feels is not very much to do this sort of study. He thought it would probably involve a consultant looking at the analysis already done and "put the consultant's own spin on it."

SENATE BILL 382, JOINT AND SEVERAL LIABILITY PROCESS UPDATE

JOHN GEACH said he was following up on some issues that were raised at the June 2, 1995 EQC meeting. He introduced a series of handouts (EXHIBIT 10) He said SB 382 did four things--it looked at the clean up standards used for state Superfund sites, it gave cost of clean up a heavier weight indecision making, although decisions still will be made based mainly protecting the environment; it established a voluntary clean up program; and it mandated the joint and several liability study and the mixed funding pilot project. MR. GEACH described the mixed funding pilot. He said the three sites for the pilot will be chosen after the sites have gone through a voluntary clean up plan review process and have been approved. If more than three

sites apply, the decision will be based on who applies first. They have put together a list of owners of the top 10 sites most needing clean up and various interest groups, state agencies. Everyone on that list will get information in the mail about the program.

MR. GEACH said the Department proposes to use the Consensus Council to work with the Department, the EQC and with affected and interested parties to first design a process for the study. The Consensus Council, after meeting with the groups, would draft a work plan and a set of ground rules for how the study will be conducted, and would seek agreement from all interested parties. The Consensus Council would meet to approve the final report and provide that for the Department and the Environmental Quality Council by mid October.

MR. NOBLE asked if they had chosen a facilitator for the described process. MR. GEACH said no, that they would use the Consensus Council to decide if they want to do that.

MATT MCKINNEY, Director of the Montana Consensus Council, elaborated on the process. He said the Consensus Council wanted to first identify individuals from all the various categories of interest, then talk to them and get their needs and input on the group, makeup of group, topics to look at, etc. They want all the interested and affected parties to design the study.

MR. TOLLEFSON said the EQC needs to decide about their level of participation in the process.

SEN. BROOKE said she had a concern that there is a misunderstanding of what the legislation says. It directs the EQC to analyze the elimination of joint and several liability; it does not presume that joint and several liability will be eliminated. She said she thought the articulation of the problem is critical. MR. MCKINNEY said he agreed that the initial statement of what the study was attempting to accomplish is essential.

MR. NOBLE asked if there would be any problem with an EQC member being on the collaborative. MR. MCKINNEY said that wasn't up to him, that the members of the working group would be decided by the aforementioned process. He said the EQC could take a position about being in the group if they wanted to.

MR. NOBLE asked that, assuming it was decided by the process for an EQC member to participate, if any of the members was interested in participating. MR. MCKINNEY suggested it might be too early for anyone to decide if they wanted to participate.

SEN. GROSFIELD said that, as introduced, SB 382 proposed eliminating joint and several liability. He said that raised some real issues regarding funding, especially the RIT funds. As a result the study was decided on as a way, not to analyze whether to eliminate joint and several liability, but to analyze the concept of if it were eliminated, how would funding be handled? He said he hoped the group could come up with a good way to solve this problem, and then put it up for debate.

SEN. WELDON said he recalled that the study called for finding the merits and the weaknesses of joint and several liability, as well as how it would be paid for, absent that liability scheme. He suggested the Department and the Consensus Council look very closely at the wording of SB 382 as well as the debate surrounding it, as this would be important to resolving the issue so it would not come up again in the next legislature.

MR. GEACH said the list of categories of interested parties was an attempt to identify groups interested on both sides of the issue; those who felt joint and several liability works and those who think it's unfair. He said there were some of the same issues coming up at the federal level Superfund, although Montana deals with it differently. At the federal level, potentially responsible parties can get together and determine how much to apportion what their liability is and then the law will consider their proposal and if they can't come to terms, it falls back to joint and several liability.

SEN. BROOKE asked SEN. GROSFIELD if it has already been determined that joint and several liability should be eliminated and if the point of the study is to determine how cost of future clean ups will be determined. SEN. GROSFIELD said it's more a question dealing with the problem that money going to clean up is not going to something else, specifically the RIT. If all the RIT money is taken away there has to be a plan to replace that money. He said he agreed that as to whether the decision had already been made to eliminate joint and several liability, he felt that the collaborative process will determine that.

MR. GEACH said he would like to see, as part of the study, a look at what other states are doing in lieu of joint and several liability that may work better.

SEN. DOHERTY said he understood that as part of going through the collaborative process the question of the efficacy of joint and several liability will be dealt with. He said that at the federal level there are several groups very interested in the Superfund law, who want to do everything from completely eliminating it to just fine tuning it. Because there is so much interest in changing the federal Superfund law, it makes our law even more important.

MR. GEACH said that the Montana law was passed to take care of the sites that do not rank high enough to be on the federal list and to deal with contaminated petroleum sites which the federal law does not deal with.

OTHER BUSINESS

Cenex Pipeline

MR. MARX said Cenex has proposed a pipeline to go through the central part of the state. It's a 16-inch pipeline; 17 inches would fall under the major facilities siting act. The DEQ, the DNRC, and the MDOT are all involved with the draft EIS. The EIS has been revised extensively and will be available for public review by July 17. There will be a 21 day public review period and then the agencies will look at public comment and make a decision. He said there was some concern expressed that the same company who did the EIS was hired to do the design of the pipeline.

MR. EVERTS said he was expecting a copy of the second draft assessment that day and would be evaluating it.

SEN. DOHERTY said he read in an article in the Great Falls Tribune that there was some confusion about who was going to monitor the pipeline in future years. MR. MARX said that it would normally be the permitting agency, but that in this case there was not much that had to be permitted by the state.

SEN. DOHERTY said the article said the state could possibly get involved in terms of safety concerns or because the pipeline will be crossing state lands. He asked if the state was looking at ways they could do some monitoring. MR. MARX said the state was looking at these sorts of things, but that the state has little authority, that it's mostly federal.

MS. SCHMIDT said she spoke with the federal inspector from the federal DOT. She said the inspector thought the pipeline had already been approved because he was already scheduled to inspect the pipeline. She said she thought that more stringent legal requirements could be imposed. MS. SCHMIDT said this is an enforcement issue, because there are almost always problems with pipeline leaks so it should be decided what measures will be used in case it happens. She said another issue was that there is not consistency among requirements for all the different kinds of pipelines.

MR. EVERTS said staff would keep the EQC updated on this issue.

SEN. DOHERTY said he would like to get a report from MR. EVERTS about the EA.

MR. NOBLE thanked outgoing executive director, Deborah Schmidt for her many years of service. He set the next meeting for September 14 and 15, to include a half day of MEPA training on September 14.

MR. NOBLE adjourned the meeting at 4:50 p.m.